

**CHAPTER 43-02-02**  
**SUBSURFACE MINERAL EXPLORATION AND DEVELOPMENT**

Section	
43-02-02-01	Definitions
43-02-02-02	Scope of Chapter
43-02-02-03	Promulgation of Rules, Regulations, or Orders
43-02-02-04	Emergency Rule, Regulation, or Order
43-02-02-05	Enforcement of Laws, Rules, and Regulations Dealing With Exploration, Development, and Production of Subsurface Minerals
43-02-02-06	United States Government Leases
43-02-02-07	Forms Upon Request
43-02-02-08	Authority to Cooperate With Other Agencies
43-02-02-09	Organization Reports
43-02-02-10	Record of Permits
43-02-02-11	Bond
43-02-02-12	Permit Required
43-02-02-13	Well Location
43-02-02-14	Sign on Wells
43-02-02-15	Pits for Drilling Fluid and Drill Cuttings
43-02-02-16	Sealing off Strata
43-02-02-17	Casing and Tubing Requirements
43-02-02-18	Defective Casing or Cementing
43-02-02-19	Blowout Prevention
43-02-02-20	Safety Regulation
43-02-02-21	Well and Lease Equipment
43-02-02-22	Completion Report and Basic Data Collected
43-02-02-22.1	Determination of Well Potential
43-02-02-23	Notice of Intention to Abandon
43-02-02-24	Method of Plugging
43-02-02-25	Wells to Be Used for Freshwater [Repealed]
43-02-02-26	Liability
43-02-02-27	Earthen Pits
43-02-02-28	Preservation of Cores and Samples
43-02-02-29	Mining Plan
43-02-02-30	Report of Production
43-02-02-31	Report of Water Injected
43-02-02-32	Pollution by Saltwater
43-02-02-33	Investigative Powers
43-02-02-34	Additional Information May Be Required
43-02-02-35	Books and Records to Be Kept to Substantiate Reports
43-02-02-36	Public Hearing
43-02-02-37	Institute Proceedings
43-02-02-38	Application for Hearing
43-02-02-39	Filing Application for Hearing
43-02-02-40	Notice of Hearings
43-02-02-41	Application for Rehearing
43-02-02-42	Burden of Proof [Repealed]

43-02-02-43	Designation of Examiners
43-02-02-44	Matters to Be Heard by Examiner [Repealed]
43-02-02-45	Powers and Duties of Examiner
43-02-02-46	Matters Heard by Commission [Repealed]
43-02-02-47	Examiner Shall Be Disinterested Umpire
43-02-02-48	Report of Examiner
43-02-02-49	Commission Order From Examiner Hearing
43-02-02-50	Hearing De Novo Before Commission [Repealed]

**43-02-02-01. Definitions.** The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 38-12.1, except:

1. "Completion" means when the well is capable of producing subsurface minerals through wellhead equipment from the ultimate producing zone after casing has been run.
2. "Deep well" means any hole drilled below one thousand feet [304.8 meters] to explore for, develop, or produce subsurface minerals.
3. "Deposit" means an underground concentration containing a common accumulation of subsurface minerals.
4. "Field" means the general area underlaid by a concentration of subsurface minerals. Field also includes the geological formation containing such subsurface minerals.
5. "Log or well log" means a systematic, detailed, and correct record of formations encountered in the drilling of a well, and includes commercial electrical logs and similar records.
6. "Nonhydrocarbon gas" means all naturally occurring gaseous elements and compounds except hydrocarbons and carbon dioxide as regulated under North Dakota Century Code chapter 38-08.
7. "Operator" means any person or persons who, duly authorized, is in charge of the development of a lease or the operation of a producing property.
8. "Owner" means the person who has the right to drill into and produce from a mineral-bearing formation and to appropriate the subsurface minerals the person produces therefrom either for that person or others or for that person and others.
9. "Producer" means the owner of a well or wells capable of producing subsurface minerals.
10. "Product" means any commodity made from any subsurface mineral.

11. "Shallow well" means any hole drilled to a total depth of less than one thousand feet [304.8 meters] for the purpose of developing or producing subsurface minerals.
12. "Testhole" means any hole drilled to a total depth of less than one thousand feet [304.8 meters] for the purpose of gathering information on subsurface minerals.
13. "Waste" means and includes (a) physical waste, (b) operations which cause or tend to cause unnecessary or excessive surface loss, and (c) operations that do not recover all of the mineral being mined that is technically and economically possible.

**History:** Amended effective August 1, 1986.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-02. Scope of chapter.** This chapter is of statewide application and has been adopted by the industrial commission to conserve the natural resources of North Dakota to prevent waste and to provide for operation in a manner as to protect correlative rights of all owners of subsurface minerals. Special rules, field rules, and regulations and orders have been and will be issued when required and shall prevail as against this chapter if in conflict therewith. However, wherever this chapter does not conflict with special rules heretofore or hereafter adopted, this chapter will apply in each case. The commission may grant exceptions to this chapter, after due notice and hearing, when such exceptions will result in the prevention of waste and operation in a manner to protect correlative rights.

**History:** Amended effective August 1, 1986.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-03. Promulgation of rules, regulations, or orders.** No rule, regulation, or order, including change, renewal, or exception thereof, shall, in the absence of an emergency, be made by the commission, except after a public hearing on at least ten days' notice given in the manner and form as may be prescribed by law. The public hearing shall be held at such time, place, and in such manner as may be prescribed by the commission, and any person having any interest in the subject matter of the hearing shall be entitled to be heard.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-04. Emergency rule, regulation, or order.** In the event an emergency is found to exist by the commission which in its judgment requires the making, revoking, changing, amending, modifying, altering, enlarging, renewing, or extending of a rule, regulation, or order without first having a hearing, such emergency rule, regulation, and order shall have the same validity as if a hearing with respect to the same had been held after due notice. The emergency rule,

regulation, or order permitted by this section shall remain in force no longer than fifteen days from its effective date, and in any event, it shall expire when the rule, regulation, or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation, or order becomes effective.

**General Authority:** NDCC 38-12-04

**Law Implemented:** NDCC 38-12-04

**43-02-02-05. Enforcement of laws, rules, and regulations dealing with exploration, development, and production of subsurface minerals.**

The commission, its agents, representatives, and employees are charged with the duty and obligation of enforcing all rules and statutes of the state of North Dakota relating to the exploration, development, and production of subsurface minerals. However, it shall be the responsibility of all owners or operators to obtain information pertaining to the regulation of subsurface minerals before operations have begun. As a matter of practice, operators shall take precautions to prevent waste and damage to mineral-bearing formations, and shall take such action as may be needed to avoid, minimize, or repair soil erosion, and to avoid pollution of air, surface water, and ground water.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-06. United States government leases.** The commission recognizes that all persons drilling on United States government land or United States minerals shall comply with the federal regulations. Such persons shall also comply with all applicable state rules and regulations which are not in conflict with federal regulations. Copies of the sundry notices and reports on wells and the well log of the wells on United States government land or minerals shall be furnished to the state geologist at no expense to the state geologist.

**History:** Amended effective August 1, 1986.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-07. Forms upon request.** Forms for written notices, requests, and reports required by the commission will be furnished upon request. These forms shall be of such nature as prescribed by the commission to cover proposed work and to report the results of completed work.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-08. Authority to cooperate with other agencies.** The commission may from time to time enter into arrangements with state and federal

government agencies, committees from industry, and individuals with respect to special projects, services, and studies relating to subsurface minerals.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-09. Organization reports.** Every person acting as principal or agent for another or independently engaged in the drilling for, or any operation pertaining to, subsurface minerals in the state of North Dakota shall immediately file with the state geologist the name under which the business is being conducted or operated, the name and post-office address of such person, the business or businesses in which the person is engaged, the plan of organization, and in case of a corporation, the law under which it is chartered, the names under which it is chartered, and the names and post-office addresses of any officials thereof. In each case where the business is conducted under an assumed name, the reports shall show the names and post-office addresses of all owners in addition to the other information required. A new report shall be filed whenever there is a change in any of the information required on the report.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-10. Record of permits.** The state geologist shall maintain an official permit list in which shall be entered:

1. The name of the permitholder.
2. The permit number.
3. The date the permit was issued.
4. The location of the permit.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-11. Bond.** Before any person receives a permit to explore for or produce subsurface minerals, the person shall submit to the commission and obtain its approval of a surety bond or cash bond. An alternate form of security may be approved by the commission after notice and hearing, as provided by law. Each such surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

1. The amount of the bond shall be commensurate with the number of wells and the type of project. The amount of a bond shall be as follows:
  - a. Single shallow well or testhole - one hundred dollars.
  - b. Blanket bond for shallow wells or testholes - ten thousand dollars.

- c. Single deep well - twenty-five thousand dollars.
  - d. Blanket bond for ten or less deep wells - one hundred thousand dollars.
  - e. Bond for strip mining - two thousand dollars per acre [.40 hectare].
2. Liability on the bond is conditioned on compliance with North Dakota Century Code chapter 38-12 and the rules and orders of the commission, and continues until any of the following occurs:
- a. The testholes or wells have been satisfactorily plugged as provided in this chapter, the sites restored and approved by the state geologist, and all logs, plugging records, and other pertinent data required by statute or rules and orders of the commission are filed and approved.
  - b. The mined lands or lands disturbed by any method of exploration or production of subsurface minerals have been restored and approved by the state geologist.
  - c. The liability on the bond has been transferred to another bond and such transfer approved by the commission. The transferee of any well or the operator of any well is responsible for the plugging of any such well and for that purpose shall submit a new bond or produce the written consent of the surety of the original or prior plugging bond that the latter's responsibility shall continue. The original or prior bond may not be released as to the plugging responsibility of any such transferor until the transferee submits to the commission an acceptable bond to cover such well. All liability on bonds continues until the plugging of such well or wells and the restoration of the surface is completed and approved.

The commission shall advise the surety and the principal when liability on a surety bond is terminated.

The state geologist is vested with the power to act for the commission as to all matters within this section.

**History:** Amended effective August 1, 1986; May 1, 2004.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-12. Permit required.** A permit shall be required prior to commencement of operations for the exploration or evaluation of subsurface minerals. The state geologist may grant a permit for one year upon receipt of a permit application on a form provided by the commission, the furnishing of a bond as provided in section 43-02-02-11, and the payment of a fee of one hundred dollars for each permit.

1. A permit shall be required for each deep well not included in an approved mining plan, and the application for such permit shall be accompanied by a plat prepared by a qualified person showing the exact location and elevation of the well.
2. A permit shall be required for each testhole drilling program exploring for subsurface minerals. The area to be explored shall be outlined on the application and the permit shall be valid only in the area so outlined.

The state geologist may deny an application for permit if the drilling of a well or other exploration operation would violate correlative rights or would cause, or tend to cause, waste, damage to the environment, damage to mineral-bearing formations, or damage to nonmineral resources. The applicant may appeal the decision of the state geologist to the commission.

**History:** Amended effective May 1, 2004.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02-13. Well location.** No well drilled for solution mining of subsurface minerals shall be located closer than five hundred feet [152.4 meters] from the boundary line of property owned or leased by the operator except by order of the commission. However, a well may be drilled three hundred feet [91.44 meters] from such boundary if the operator submits geological and other technical data to the commission which indicates that waste would occur and that correlative rights will not be violated. The term boundary line as used herein is understood to mean the boundary of a contiguous set of properties either owned or leased by the operator.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-14. Sign on wells.** Every exploratory deep well shall be identified by a sign, posted on the derrick or not more than twenty feet [6.10 meters] from such well, and such signs shall be of durable construction and the lettering thereon shall be kept in a legible condition and shall be large enough to be legible under normal conditions at a distance of fifty feet [15.24 meters]. The wells on each lease or property shall be numbered in a nonrepetitive, logical sequence. Each sign will show the number of the well, the name of the lease (which shall be different or distinctive for each lease), the name of the lessee, owner, or operator, permit number, and the location by quarter-quarter section, section, township, and range. Where wells producing subsurface minerals are closely spaced on the surface, this requirement shall be satisfied by one general sign giving the name of the lease, the name of the lessee, owner, or operator, permit number, and the location by quarter-quarter section, section, township, and range, provided this sign is visible from the individual wells. In this case, a sign showing the number of the well will be posted on each well.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-15. Pits for drilling fluid and drill cuttings.** In order to assure a supply of proper material or mud-laden fluid to confine oil, gas, water, or any subsurface mineral to their native strata during the drilling of any well, each operator shall provide, before drilling is commenced, a pit of sufficient size to contain said material or fluid, and the accumulation of drill cuttings. Such pits located in permeable material shall be lined in a manner approved by the state geologist.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-16. Sealing off strata.** During the drilling and operation of any well for subsurface minerals, all strata above the producing horizon shall be sealed or separated where necessary in order to prevent their contents from passing into other strata.

All fresh waters and waters of present or probable value for domestic, commercial, or stock purposes shall be confined to their respective strata and shall be adequately protected by methods approved by the commission. Special precautions shall be taken in drilling and abandoning wells to guard against any loss of artesian water from the strata in which it occurs, and the contamination of artesian water by objectionable water or subsurface minerals.

All water shall be shut off and excluded from the various subsurface mineral-bearing strata which are penetrated. Water shutoffs shall ordinarily be made by cementing casing or landing casing with or without the use of mud-laden fluid.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-17. Casing and tubing requirements.** All wells drilled for subsurface minerals shall be completed with strings of casing which shall be properly cemented at sufficient depths adequately to protect the subsurface mineral-bearing strata to be produced.

Sufficient cement shall be used on surface casing to fill the annular space back of the casing to the bottom of the cellar or to the surface of the ground. All strings of casing shall stand cemented under pressure for at least twelve hours before drilling plug or initiating tests. The term under pressure as used herein will be complied with if one float valve is used or if pressure is otherwise held. Cementing shall be by the pump and plug method, or other method approved by the commission.

All production wells shall be equipped with tubing and packer and the annulus pressure must be monitored to detect leaks or breaks in the casing or

tubing, unless the entire casing string is cemented to surface when initially set in place.

**History:** Amended effective August 1, 1986.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-18. Defective casing or cementing.** In any well that appears to have defective casing, be faultily cemented, or have corroded casing which will permit or may create underground waste or pollution, the operator shall proceed with diligence to use the appropriate method and means to eliminate such hazard. If waste cannot be eliminated, the well shall be properly plugged and abandoned.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-19. Blowout prevention.** When drilling on lands valuable or potentially valuable for oil and gas, drilling equipment shall be equipped with blowout control devices before penetrating any formation, strata, or zone that might contain oil and gas.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-20. Safety regulation.** When coming out of the hole with drill pipe, drilling fluid shall be circulated until equalized and subsequently drilling fluid level shall be maintained at a height sufficient to control subsurface pressures. During the course of drilling, blowout preventers shall be tested at least once every twenty-four-hour period, and the test noted in driller's record.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-21. Well and lease equipment.** Wellhead equipment with a working pressure at least equivalent to the calculated or known pressure to which the equipment may be subjected shall be installed and maintained in first-class condition so that tests may be made easily. Valves shall be installed and maintained in good working order to permit pressure readings to be obtained on both casing and tubing.

**History:** Amended effective August 1, 1986.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-22. Completion report and basic data collected.** Within thirty days after the completion of any well drilled for subsurface minerals, or the completion of an exploration program for subsurface minerals, a completion report shall be filed with the state geologist, on a form prescribed by the commission.

The following basic data developed by the operator shall be delivered, free of charge, to the state geologist, if requested, within six months of the expiration date of the permit:

1. Washed and packaged sample cuts, core chips, or whole cores minus those portions of cores used for necessary testing or analysis in which case the results of testing, the analysis and the description of missing portions shall be submitted to the state geologist upon request.
2. Sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.
3. Elevation and location information on the data collection points.
4. Other pertinent information as may be requested by the state geologist.

When requested by the operator, the data submitted shall be confidential for a period of one year commencing on the expiration date of the permit. Such period may be further extended upon approval of the commission.

Data on a particular stratum restricted to that stratigraphic interval containing the actual ore, which is being explored, developed, or mined, shall be confidential as long as the operator is exploring, developing, or producing from that particular stratum within the general area being explored, developed, or mined by the operator. The general area, as used herein, shall be defined jointly by the state geologist and the operator. Definition of the stratigraphic interval will be made by the state geologist. Data from the stratigraphic interval will, at the discretion of the state geologist, be retained in the North Dakota office of the operator during the period of confidentiality. The industrial commission and the state geologist shall have access to all confidential data.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-22.1. Determination of well potential.** After the completion or recompletion of a nonhydrocarbon gas well, the operator shall conduct tests to determine the daily open flow potential of the well. The test results together with an analysis of the gas must be reported to the state geologist within thirty days after completion of the well.

Operators shall conduct tests to determine the daily open flow potential volumes of gas wells from which gas is being used or marketed in accordance with an order of the commission or at the request of the state geologist. Test procedures must be those commonly used in the industry unless otherwise approved by the state geologist.

**History:** Effective August 1, 1986.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-23. Notice of intention to abandon.** Notice of intention to abandon any well shall be filed with the state geologist by the operator or the operator's agent prior to the commencement of plugging operations, on a form prescribed by the commission, which notice shall state the name and location of the well and the name of the operator. In case of abandonment of any well, the operator may commence plugging by giving reasonable notice to, and securing approval from, the office of the state geologist as to the time plugging operations are to begin. This section shall not apply to testholes.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-24. Method of plugging.** Before any well or testhole is abandoned, it shall be plugged in a manner which will confine permanently all subsurface minerals, oil, gas, and water in the separate strata originally containing them. This operation shall be accomplished by the use of mud-laden fluid, cement, and plugs, used singly or in combination as may be approved by the state geologist. Casing shall be cut off three feet [.91 meters] below the surface of the ground. The top plug in any hole shall be set at least three feet [.91 meters] below ground level, and the land surface shall be restored as nearly as possible to its original condition.

A well may be abandoned temporarily upon approval of the state geologist. In such event, casing may not be pulled and a plug must be placed at the top of the casing, in such manner as to prevent the intrusion of any foreign matter into the well.

When drilling or production operations have been suspended for six months, wells must be plugged and abandoned in accordance with regulations of the commission unless a permit for temporary abandonment has been obtained from the state geologist.

**History:** Amended effective August 1, 1986.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-25. Wells to be used for freshwater.** Repealed effective August 1, 1986.

**43-02-02-26. Liability.** The owner of any well shall be liable and responsible for the plugging thereof in accordance with the rules and regulations of the commission.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-27. Earthen pits.** All earthen pits used during the drilling of a well shall be filled and leveled within a reasonable time after the completion of the well.

Earthen pits, except those necessary for the drilling of a well, shall not be used for any purpose without the prior approval of the state geologist.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-28. Preservation of cores and samples.** Sample cuttings of formations, taken at regular intervals, in all wells drilled for subsurface minerals or geological information in North Dakota, shall be washed and packaged in standard sample envelopes which in turn must be placed in proper order in a standard sample box carefully identified as to operator, well name, and location, and depth of sample, and shall be shipped free of cost to the state geologist, if requested.

The operator of any well drilled for subsurface minerals in North Dakota shall, during the drilling of, or immediately following the completion of, any given well advise the state geologist, or the state geologist's representative, of all intervals that are to be cored, or have been cored. All cores taken shall be preserved and forwarded to the state geologist, free of cost, unless specifically exempted by the state geologist. If the state geologist does not desire the core, the operator shall advise the state geologist of the final disposition of the core.

This section does not prohibit the operator from taking such samples of the core as the operator may desire for identification and testing. The operator shall furnish the state geologist with the results of identification or testing procedure.

**History:** Amended effective October 1, 1990.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-29. Mining plan.** Before conducting any mining or production operations, the operator shall submit to the state geologist for approval a mining plan which shall show in detail the proposed development or mining operations to be conducted. Mining plans shall be consistent with and responsive to the requirements of not only this chapter but also statutes and rules for the protection of nonmineral resources, and for the reclamation of the surface of the lands affected by the operations. No operations shall be conducted except under an approved plan. Those portions of a mining plan which contain information which is proprietary to a specific company's mining methods shall be retained at that company's office located nearest the mining site, and shall be approved by the state geologist and open to inspection by the state geologist and the industrial commission at all times. In the event of disagreement as to what constitutes proprietary information, it shall be resolved by the company, the state geologist, and the industrial commission. All portions of the mining plan which provide for the protection of natural resources, other than the mineral being mined, and for the reclamation of the surface shall be filed in the office of the state geologist.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-30. Report of production.** The operator of each and every well or mine shall, on or before the tenth day of the second month following the month in which production occurs, file with the state geologist a sworn statement showing the amount of production made by each such well or mine during the month. The term mine includes the case where multiple closely spaced wells are used to mine a deposit, and in such case production will be reported from the mine rather than from each individual well. Multiple closely spaced wells means where more than one well is used to produce subsurface minerals in each eighty-acre [32.37-hectare] subdivision of the mine.

Production data submitted to the state geologist shall be kept confidential for a period of one year when so requested by the operator. Such period may be further extended upon approval by the commission.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-31. Report of water injected.** The operator of each and every injection well shall, on or before the tenth day of the second month following the month in which injection occurs, file with the state geologist a sworn statement showing the amount of liquid injected, the composition of the liquid, and the source thereof.

**History:** Amended effective August 1, 1986.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-32. Pollution by saltwater.** All saltwater liquids or brines produced shall be disposed of without pollution of freshwater supplies. Disposal shall be in accordance with an order of the commission, after hearing. At no time shall saltwater liquids or brines be allowed to flow over the surface of the land or into streams. Pits shall not be constructed within natural surface drainage channels and, before any saltwater liquid or brine is placed in the pit, any pit which is bottomed in permeable materials, such as sand or gravel, shall be lined with an impermeable material. The commission shall have the authority to condemn any pit which does not properly impound such water.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-33. Investigative powers.** Upon receipt of a complaint from any landowner, royalty owner, mineral owner, local or federal official, in the official's official capacity, or any member of the state legislative assembly, in the legislator's official representative capacity, or any other interested party, alleging drilling or production operations which are in violation of the statutes or any rule, regulation, or order of the commission, the state geologist shall immediately cause an investigation of such complaint to be made. The state geologist may also conduct such investigations on the geologist's own initiative or at the direction of the commission. If after such investigation the state geologist affirms that cause

for complaint exists, the state geologist shall cause written notice of the results of the investigation to be mailed to the operator of the drilling or production operation and shall forthwith notify the commission, in writing, of the investigation. The commission shall institute such legal proceedings as, in its discretion, it believes necessary to enjoin further activities resulting in the violation complained of.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-34. Additional information may be required.** This chapter shall not be taken or construed to limit or restrict the authority of the industrial commission to require the furnishing of such additional reports, data, or other information relative to production or products in North Dakota as may appear to be necessary or desirable, either generally or specifically for the prevention of waste and the conservation of natural resources of North Dakota.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-35. Books and records to be kept to substantiate reports.** All producers within North Dakota shall make and keep appropriate books and records for a period not less than five years, covering their operations in North Dakota from which they may be able to make and substantiate the reports required by this chapter.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-36. Public hearing.** Except as provided for herein, before any rule, regulation, or order shall be made, including revocation, change, renewal, or extension thereof, a public hearing shall be held at the time, place, and manner as may be prescribed by the commission.

**General Authority:** NDCC 38-12-04

**Law Implemented:** NDCC 38-12-04

**43-02-02-37. Institute proceedings.** The commission, upon its own motion, and the attorney general, on behalf of the state, and any operator, producer, taker, or other person interested in any common source of supply of subsurface minerals may institute proceedings. The commission shall have jurisdiction to make any and all orders, rules, and regulations authorized by laws of this state.

**General Authority:** NDCC 38-12-04

**Law Implemented:** NDCC 38-12-04

**43-02-02-38. Application for hearing.** In any proceeding instituted upon application, the application shall be signed by the applicant or by the applicant's attorney. An application shall state (1) the name and general description of the

common source or sources of supply affected by the order, rule, or regulation sought, if any, unless same is intended to apply to and affect the entire state, in which event the application shall so state, and such statement shall constitute sufficient description; and (2) briefly the general nature of the order, rule, or regulation sought in the proceedings.

**History:** Amended effective August 1, 1986.

**General Authority:** NDCC 38-12-04

**Law Implemented:** NDCC 38-12-04

**43-02-02-39. Filing application for hearing.** When an application is filed, it shall be set for hearing before the commission at such time as will permit ten days' notice thereof to be given, as provided in section 43-02-02-40.

**General Authority:** NDCC 38-12-04

**Law Implemented:** NDCC 38-12-04

**43-02-02-40. Notice of hearings.** Upon the institution of a proceeding by application, the commission shall give at least ten days' (except in emergency) notice of the time and place of hearing thereon by one publication of such notice in newspapers of general circulation published at Bismarck, North Dakota, and in the county where the land affected or some part thereof is situated, unless in some particular proceeding a longer period of time or a different method of publication is required by law, in which event such period of time and method of publication shall prevail. The notice shall issue in the name of the state and shall be signed by the chairman or secretary of the commission, and shall conform to the other requirements provided by law. In case an emergency is found to exist by the commission which in its judgment requires for the making of a rule, regulation, or order without first having a hearing, such emergency rule, regulation, or order shall have the same validity as if a hearing with respect to the same had been held after notice. The emergency rule, regulation, or order permitted by this section shall remain in force no longer than fifteen days from its effective date, and in any event, it shall expire when the rule, regulation, or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation, or order becomes effective.

**General Authority:** NDCC 38-12-04

**Law Implemented:** NDCC 38-12-04

**43-02-02-41. Application for rehearing.** Within thirty days after the entry of any order or decision of the commission or the state geologist, any person affected thereby may file with the commission an application for rehearing in respect of any matter determined by the order or decision, setting forth the respect in which the order or decision is believed to be erroneous. The commission shall grant or refuse any such application in whole or in part within fifteen days after it is filed. In the event

the rehearing is granted, the commission may enter such new order or decision after rehearing as may be required under the circumstances.

**General Authority:** NDCC 38-12-04

**Law Implemented:** NDCC 38-12-04

**43-02-02-42. Burden of proof.** Repealed effective August 1, 1986.

**43-02-02-43. Designation of examiners.** The commission may by motion designate and appoint qualified individuals to serve as examiners. The commission may refer any matter or proceeding to any legally designated and appointed examiner for hearing in accordance with this chapter.

**History:** Amended effective August 1, 1986.

**General Authority:** NDCC 38-12-04

**Law Implemented:** NDCC 38-12-04

**43-02-02-44. Matters to be heard by examiner.** Repealed effective August 1, 1986.

**43-02-02-45. Powers and duties of examiner.** The commission may, by motion, limit the powers and duties of the examiner in any particular case to such issues or to the performance of such acts as the commission deems expedient. However, only to such limitation as may be ordered by the commission, the examiner to whom any matter or proceeding is referred under this chapter shall have full authority to hold hearings on such matter or proceeding in accordance with and pursuant to this chapter. The examiner shall have the power to regulate all proceedings before the examiner and to perform all acts and take all measures necessary or proper for the efficient and orderly conduct of the hearing, including the swearing of witnesses and receiving of testimony and exhibits offered in evidence, subject to such objections as may be imposed, and shall cause a complete record of the proceedings to be made and retained.

**History:** Amended effective August 1, 1986.

**General Authority:** NDCC 38-12-04

**Law Implemented:** NDCC 38-12-04

**43-02-02-46. Matters heard by commission.** Repealed effective August 1, 1986.

**43-02-02-47. Examiner shall be disinterested umpire.** An examiner conducting a hearing under this chapter shall conduct oneself as a disinterested umpire.

**General Authority:** NDCC 38-12-04

**Law Implemented:** NDCC 38-12-04

**43-02-02-48. Report of examiner.** Upon the conclusion of any hearing before an examiner, the examiner shall promptly consider the proceedings in such

hearings, and based upon the record of such hearing, the examiner shall prepare a report and recommendations for the disposition of the matter or proceeding by the commission. The report and recommendations shall either be accompanied by a proposed order or shall be in the form of a proposed order, and shall be submitted to the commission.

**History:** Amended effective August 1, 1986.

**General Authority:** NDCC 38-12-04

**Law Implemented:** NDCC 38-12-04

**43-02-02-49. Commission order from examiner hearing.** After receipt of the report and recommendation of the examiner, the commission shall enter its order disposing of the matter or proceeding.

**General Authority:** NDCC 38-12-04

**Law Implemented:** NDCC 38-12-04

**43-02-02-50. Hearing de novo before commission.** Repealed effective August 1, 1986.